IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO: 178 OF 2006 (M/S)

Mohan son of Kali Ram, R/o 11, Civil Lines, Roorkee, district Hardwari.

------Petitioner.

Versus

1. State of Uttaranchal through its Secretary, Ministry of Labour, Civil Secretariat, Dehradun.
2. Deputy Labour Commissioner, Dehradun.
3. Assistant Labour Commissioner, Hardwar.
4. Uttri Khand Ganga Nahar, Roorkee, through its Executive Officer.

-----Respondents

Sri Tumul Nailwal, learned Counsel for petitioners.
Standing Counsel for respondents.

Dated : April 17, 2006.
HON'BLE RAJESH TANDON, J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 24.04.2002 by which the reference has been rejected by the Deputy Labour Commissioner.

Briefly stated, according to the case of the petitioner he was working as a Beldar on muster roll Uttri Khand Ganga Nahar, Roorkee from 01.01.1986 to 30.07.1991. He moved an application under section 2-A of Industrial Disputes Act and the case was registered on 14.02.2001 and the delay was also condoned in filing the application under reference. However, the same has been rejected by a cryptic order to the following effect:

''''प्रेपक,

प्रेपित

उपश्रमायुक्त गढ़वाल क्षेत्र
46.ई0सी0 रोड देहरादून

श्री मोहन पुत्र श्री नकलीराम
11 सिविल लाईन

रूडकी हरिद्वार

पत्रांक /देहरादून–सी0पी0/प्राखा–सचि02002 दिनांक

विपय सी0पी0 विवाद संख्या 60 आर/01/अधिप्रासी अभियन्ता, उत्तरी खण्ड गंगा नहर रूडकी एवं श्री मोहन के मध्य।

प्रार्थी को सूचित किया जाता है कि उक्त सी0पी0 विवाद की निम्नांकित कारण से अभिनिर्णय हेतु अनुपयुक्त पाया गया है।
कारण– चूँकि श्रमिक द्वारा प्रतिवादी पक्ष द्वारा उठयी गयी आपत्तियों का कोई अमुचित एवं संतोष जनक प्रतिवाद नहीं किया गया है। अतः पक्षों के मध्य कोई औघोगिक वाद विघमान न होने के कारण सी0पी0 विवाद सन्दर्भ योग्य नहीं है।

जे0एम0 बिष्ट
उपश्रमायुक्त
गढ़वाल क्षेत्र
देहरादून''

Counsel for the petitioner has referred the judgment of Sharad Kumar Vs Government of NCT of Delhi and others (2002)4 Supreme Court Cases 490 where it has been held as under:

"We are of the view that determination of the question requires examination of factual matters for which materials including oral evidence will have to be considered in such a matter the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 25 of the Act, thereby terminating the proceedings prematurely such a matter should be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Thus, the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable."

In view of the aforesaid facts and circumstances the matter is remanded to the Deputy

Labour Commissioner for referring the matter in accordance with law.

Subject to aforesaid observations, the writ petition succeeds and is allowed. No order as to costs.

(Rajesh Tandon, J)

17.04.2006.
Negi.